

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7253**

**BILL NUMBER:** SB 232

**NOTE PREPARED:** Feb 20, 2009

**BILL AMENDED:** Feb 19, 2009

**SUBJECT:** Public Access Issues.

**FIRST AUTHOR:** Sen. Gard

**FIRST SPONSOR:**

**BILL STATUS:** CR Adopted - 1<sup>st</sup> House

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill provides that the court may impose a civil penalty against an officer or employee of a public agency, or the public agency for violating the Public Records Law or the Open Door Law of: (1) not more than \$100 for the first violation; and (2) not more than \$500 for any additional violations. It provides that a public agency (excluding a state agency) may provide to persons who annually request notice of meetings, notice by: (1) electronic mail (if the agency has the capacity to transmit electronic mail); or (2) posting the notice on the agency's web site at least 48 hours before the meeting (if the agency has a website).

The bill provides that a public agency may withhold personal information from public disclosure regarding an individual less than 19 years of age who participates in an activity conducted or supervised by a state educational institution, including personal information regarding the individual's parent or guardian. It requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the public records act. If a formal complaint is filed, it requires the Public Access Counselor to review public records in camera without redaction (excluding redacted information that is work product of an attorney) to determine whether the redaction of the records violated the access to public records act.

The bill creates an Education Fund for a program administered by the Public Access Counselor to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws.

**Effective Date:** July 1, 2009.

**Explanation of State Expenditures:** (Revised) *Requests for Notices:* This bill could have an indeterminable fiscal impact on all public agencies that are not state agencies (as defined in IC 4-13-1-1) beginning in FY 2010. The bill requires that any person who delivers an annual written request for notice may receive the notice by one of two methods as determined by the governing body: by electronic mail, or by posting the notice on the public agency's website at least 48 hours before the meeting. Under current law, all public agencies are only required to provide notice by fax, email, or postage to "all news media which delivered" an annual written request for notice. The increase in expenditures will depend upon the number of people who request notices that were not previously receiving notices.

(Revised) *Public Records and Open Door Laws:* This bill could also increase expenditures of any public agency if the agency or any officer or employee of that agency knowingly and intentionally fails to perform a duty imposed under IC 5-14-1.5 by:

- (1) Failing to give proper notice of a regular meeting, special meeting, or executive session.
- (2) Taking final action outside a regular meeting or special meeting.
- (3) Participating in a secret ballot during a meeting.
- (4) Discussing in an executive session subjects not eligible for an executive session.
- (5) Failing to prepare a memorandum of a meeting required by IC 5-14-1.5-4.
- (6) Participating in at least one gathering of a series of gatherings under IC 5-14-1.5-3.1.

The bill allows a court to assess a civil penalty of not more than \$100 for the first violation, and not more than \$500 for each additional violation of the provisions above. The penalties are required to be deposited in the Education Fund established under the bill. The amount of penalties that will be collected is indeterminable because it will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

(Revised) *Background Information* - Under IC 5-14-1.5-2 "public agency" means the following:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
  - (A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or
  - (B) audit by the State Board of Accounts.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.
- (6) The Indiana Gaming Commission established by IC 4-33, including any department, division, or office of the commission.
- (7) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the commission.

Under this bill, the public agencies included above would be subject to the provisions regarding the Public Records and Open Door Laws. However, only public agencies that are not included in the definition of state

agencies in IC 4-13-1-1 would be subject to the provisions regarding requests for notices.

According to IC 4-13-1-1, "state agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government. The term "state agency" does not include the judicial or legislative departments of state government, nor does that term include a state educational institution.

**Explanation of State Revenues:** Revenues from a public agency violating the provisions of this bill will be distributed into the Education Fund. The amount of revenue is indeterminable and will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

The nonreverting Education Fund established under the bill is required to be administered by the State Budget Agency and used to pay: (1) expenses of administering the Fund; and (2) the administrative costs of training public officials and educating the public on the rights of the public and the responsibilities of public agencies under the public access laws.

**Explanation of Local Expenditures:** Local units and agencies are included in the definition of public agency. Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.

**Explanation of Local Revenues:** Revenues from a public agency violating the provisions of this bill will be distributed into the Education Fund. The amount of revenue is indeterminable and will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

**State Agencies Affected:** All.

**Local Agencies Affected:** All.

**Information Sources:**

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